

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2014-113101-001 DT

05/29/2015

HONORABLE BRUCE R. COHEN

CLERK OF THE COURT  
B. McDonald  
Deputy

STATE OF ARIZONA

RAMSEY BRONYAH

v.

JASON THOMAS SCHALL (001)

URSULA H GORDWIN

**ORDER RE: MOTION TO SUPPRESS**

Defendant asserts that there was no reasonable suspicion of any criminal activity sufficient for the Phoenix Police Department to justify the detention, arrest or search. The applicable law is not materially in dispute and the Court has considered *Terry v Ohio* and its progeny as well as *Florida v Royer* in analyzing the facts presented.

The pertinent facts were established at the hearing conducted on May 29, 2015. Officer Hoelscher testified that he was on duty on March 19, 2014. He and other officers responded to an alleged forgery call at a T-Mobile store near Thunderbird and 35<sup>th</sup> Avenue in Phoenix. Initial contact with Defendant was made by other officers outside the store, including Lieutenant (now "Commander") Henry, while Officer Hoelscher made contact with the suspect who was within the store.

The actions of the other suspect, Tiffany Polychronis, are relevant. She was the person suspected of having engaged in the forgery. While Ms. Polychronis was being questioned inside the store, she made reference to the red Honda Civic that was parked outside of the store and claimed that it belonged to her. She initially stated that no one had permission to be in the vehicle. She then changed her story and stated that the person within the car had come to the store with her.

While Officer Hoelscher was addressing Ms. Polychronis inside the store, Lieutenant Henry observed the red Honda Civic with its engine running outside the store. Since the engine

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2014-113101-001 DT

05/29/2015

was running, Lieutenant Henry pulled his vehicle directly behind the red Honda but it is arguable that Defendant still had the ability to drive off. Lieutenant Henry approached the driver side and found him to be asleep. Lieutenant Henry then made overt acts to awaken Defendant. Once awakened, Defendant was told to remain in his vehicle which he did while Officer Hoelscher was within the store with Ms. Polychronis. While in the vehicle, Defendant was observed to repeatedly attempt to reach into the pockets of his shorts. It is noteworthy that since it was only 8 p.m. and Defendant was found to be asleep at the wheel, there was some concern that Defendant may have been under the influence.

He was eventually asked to step out of his vehicle. Upon doing so, Defendant lifted his shirt to show that he did not have a weapon in his waistband. (This did not mean that he did not have a weapon elsewhere upon his body.) A discussion ensued during which Defendant admitted that he had just been released from prison. Thereafter, and based upon other concerns articulated by Lieutenant Henry during the hearing, Defendant was escorted into the store by Lieutenant Henry. Upon entry, Ms. Polychronis acknowledged that Defendant was her friend to which Defendant purportedly responded that he did not know her.

The facts presented do not suggest that the detention of Defendant initiated by Lieutenant Henry was consensual under *Florida v Royer*. The totality of the circumstances would lead a reasonable person to believe that they were not free to leave. As such, the State's contention that the detention was consensual is rejected. The Court also rejects the State's argument for inevitable discovery as being an accomplice of Ms. Polychronis. The facts that then-existed and since developed do not support that conclusion. Similarly, the Court rejects the approach argued by Defendant that probable cause is required. Regardless of what Lieutenant Henry believed or was told by other officers, the law is not subjective to the beliefs of the officers. Rather, it is based upon the objective reasonable person standard. Here, whether any officer was correct or incorrect in interpreting the law, the Court must apply the applicable law to the facts that are established.

The facts presented more than suggest that there was an adequate basis under *Terry* and other applicable cases to temporarily detain Defendant, even if Lieutenant Henry was thinking otherwise (believing that there was probable cause and a basis for arrest). Clearly, there was reasonable suspicion of criminal activity, whether considered as a possible DUI or when taken in context with the facts being developed involving Ms. Polychronis. This is not a situation where Defendant was merely present in an area where criminal activity was suspected. Rather, he was present in a vehicle and behaving in a fashion that could suggest impairment. Alternatively, Defendant was linked to a suspect of a crime, denied any knowledge of the suspect, and was identified by the suspect as having accompanied her. While this does not necessarily suggest actual knowledge on the part of Defendant as to the crimes that Ms. Polychronis was perhaps contemplating or committing within the T-Mobile store, it is more than sufficient to establish

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2014-113101-001 DT

05/29/2015

proper detention of Defendant as the investigation was developing. Further, there were some actions of Defendant within the store that at least suggested that he was trying to leave the store against the directives from law enforcement. Additionally, he repeatedly attempted to place his hands in his pockets despite directions to the contrary from the officers present.

Once the warrantless detention is deemed justifiable, law enforcement officers are authorized to perform a *Terry* frisk of the individual being detained for officer safety. This is true despite the assertions by Defendant at the time of the detention that Lieutenant Henry could not legally search Defendant and clearly did not consent to the search. Defendant's subjective beliefs are no more binding on the Court than are Lieutenant Henry's belief. Here, illegal substances were discovered to be on Defendant's person as part of the lawful *Terry* frisk. Contrary to the assertions of defense counsel, the constitution is alive and well in this case.

For the reasons stated herein and based upon the facts established,

**IT IS ORDERED DENYING the Motion To Suppress.**

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.